

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3070 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

-----

GANGABEN WD/O BHAGABHAI KARSANBHAI & ORS.

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR, SAURAT & ANR.

-----

Appearance:

Kum. V.P. Shah, Senior Advocate, with Kum. K.J. Brahmbhatt, Advocate, for the Petitioners

Shri D.N. Patel, Asst. Govt. Pleader, for Respondent No.1

Shri A.J. Shastri, Advocate, for Respondent No. 2

-----

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No.1 herein) on 16th November 1983 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the

Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the appellate authority for convenience) on 27th February 1989 in Appeal No. Surat-26 of 1986 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioners to be in excess of the ceiling limit by 18330 square meters.

2. The facts giving rise to this petition move in narrow compass. Petitioner No.1 filed a declaration in the prescribed form under sec. 6(1) of the Act. It was duly processed by respondent No.1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 16th November 1983 under sec. 8(4) of the Act, respondent No.1 declared the holding of petitioner No. 1 to be in excess of the ceiling limit by 18330 square meters. Its copy is at Annexure E to this petition. The aggrieved petitioners carried the matter in appeal before the appellate authority under sec. 33 of the Act. It came to be registered as Appeal No. Surat-26 of 1986. By the order passed on 27th February 1989 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure F to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition as affirmed in appeal by the appellate order at Annexure F to this petition.

3. It transpires from the material on record that the land bearing survey No. 100 situated in Jehangirabad was held by the husband of petitioner No.1 and father of petitioners Nos. 2 to 4 as the tenant and he became its deemed purchaser under the Bombay Tenancy and Agricultural Lands Act, 1948. He appears to have died some time in 1970 leaving behind him petitioner No.1 as his widow and petitioners Nos. 2 to 4 as his daughters and son respectively. Kum. Shah for the petitioners is right in her submission that, by virtue of the relevant provisions contained in the Hindu Succession Act, 1956, the land in question would devolve upon the petitioners in equal share and they would hold the same as tenants-in-common and not as joint tenants by virtue of sec. 19 thereof as their deceased predecessor-in-title died intestate. As rightly submitted by her, members of a family cannot be treated as an association of persons in view of the binding ruling of the Division Bench of this Court in the case of Chhaganlal Trikamdas Thakker & Ors. v. Competent Authority, Rajkot and others reported in 1994(1) Gujarat Current Decisions at page 1. The contrary view taken by the authorities below, more particularly by the appellate authority in the appellate order at Annexure F to this petition, cannot therefore be sustained in law. Each

petitioner would be entitled to a separate ceiling unit under the Act.

4. Learned Advocate Kum. Shah for the petitioners has pressed into service the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465 for the purpose of exclusion of the land in question on the ground that it was used for agricultural purposes on the date of coming into force of the Act. It appears that the attention of the authorities below was not focussed on this aspect of the case as the aforesaid binding ruling of the Supreme Court had not seen the light of the day when the authorities below decided the fate of the proceeding pending before them. In order to ascertain the applicability of the aforesaid binding ruling of the Supreme Court, it will have to be found out whether or not any master plan was in existence answering its definition contained in sec. 2(h) of the Act in the area in question, what was the situation of the land of the petitioners therein and whether or not agricultural operations were carried on therein at the relevant time. This will have to be done by respondent No. 1.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure E to this petition as affirmed in appeal by the appellate order at Annexure F to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to the law in the light of the aforesaid three questions and in the light of this judgment of mine. It is clarified that each petitioner would be entitled to a separate ceiling unit for the purposes of the Act.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No. 1 herein) on 16th November 1983 under sec. 8(4) of the Act at Annexure E to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 27th February 1989 in Appeal No. Surat-26 of 1986 at Annexure F to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

-----